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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)

Billed Party Preference for)
InterLATA O+ Calls)

CC Docket No. 92-77

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**REPLY COMMENTS OF INMATE CALLING
SERVICES PROVIDERS COALITION**

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SUMMARY

Billed party preference ("BPP") is no longer a viable option. Instead, the Commission should curtail excessive inmate calling service provider ("ICSP") rates by setting a reasonable benchmark. The benchmark proposals of various parties with respect to interstate inmate service rates are quite uniform. However, the preferred approach is for the Commission to establish, in CC Docket No. 96-128, a \$.90 inmate system compensation charge for all inmate service calls. This approach should enable ICSPs to conform their rates to the Commission's proposed benchmark of 115% of Big Three rates.

The record supports all the mechanisms proposed by the Inmate Calling Service Providers Coalition for effectively enforcing a rate benchmark, including: (1) heightened tariff scrutiny of rates above the benchmark; (2) mandatory disclosure of rates above the benchmark; and (3) local exchange carrier ("LEC") bill screening of calls with rates above the benchmark.

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**REPLY COMMENTS OF INMATE CALLING
SERVICES PROVIDERS COALITION**

The Inmate Calling Services Providers Coalition ("Coalition") hereby submits its reply to the comments filed in response to the Commission's Second Further Notice of Proposed Rulemaking, FCC 96-253 (June 6, 1996) ("Notice") in the above-captioned proceeding.

I. INTRODUCTION

In the Notice, the Commission expressed concern over the "high charges to the billed party for collect [inmate calls]."¹ The Coalition shares that concern. While only a small minority² of inmate calling services providers ("ICSPs") charge excessive rates, the entire industry is tainted by the practice.

¹ Notice, ¶ 48.

² Citizens United for the Rehabilitation of Errants ("CURE") apparently believes that all ICSP rates are "oppressive" because they are higher than non-inmate rates. Comments of Citizens United for the Rehabilitation of Errants at 1, 7 ("Nor does C.U.R.E. believe that there exists any legitimate reason why inmate families and friends should be forced to pay rates in excess of those enjoyed by other parties who are billed for collect calls."). However, as the Coalition explained in its initial comments, the inmate environment requires a specialized and expensive integrated package of equipment and services not required for non-inmate calling. See Coalition Comments at 2-5. The Commission has itself recognized, that "we would expect that competitive prices for

(Footnote continued)

The Commission suggested in the Notice that it was considering several methods for addressing the problem of ICSP overcharging, including Billed Party Preference ("BPP"), rate caps, and price disclosures.³ The record in this proceeding makes clear that BPP is not a viable option. Not a single commenter continues to advocate BPP in the inmate environment.⁴

Instead, the Coalition believes that the Commission can and should curtail excessive ICSP rates by setting a reasonable benchmark rate for interstate inmate 0+ collect calls and requiring both price disclosure and cost-justification for rates in excess of that benchmark. With the enactment of Section 206 of the Communications Act, 47 U.S.C. § 276, expressly mandating the Commission to ensure fair compensation of inmate service providers as well as other payphone service providers for "each and every completed intrastate and interstate call," the Commission can now address the interstate 0+ rate issue more rationally.

(Footnote continued)

inmate-only telephone calls from prisons could be higher than the rates of calls from ordinary locations." Notice, ¶ 48. Specialized inmate calling systems and services are critical to maintaining the security of confinement facilities and guaranteeing inmates fair access to phones. They are far from "correctional facility 'wish lists.'" Comments of Citizens United for the Rehabilitation of Errants at 7 n. 12.

³ Id.

⁴ Even C.U.R.E., which has long been a highly vocal proponent of BPP, concedes that BPP is not currently a viable option. See Comments of Citizens United for the Rehabilitation of Errants at 2.

II. THE COMMISSION CAN PROVIDE FAIR COMPENSATION FOR INMATE CALLING SERVICES PROVIDERS IN A VARIETY OF WAYS, WHILE ENSURING REASONABLE RATES FOR INMATES AND THEIR FAMILIES

In its initial comments in this proceeding, the Coalition proposed that the benchmark rate should be set at the average of the time-of-day⁵ rates charged by AT&T, MCI, and Sprint (the "Big Three") for 0+ inmate collect calls, plus 15%. A preferable alternative is for the Commission to adopt the \$.90 inmate system compensation charge that the Coalition has demonstrated is necessary to ensure fair compensation for inmate calls,⁶ and to set the benchmark rate set at the Big Three's existing ~~non-inmate~~ rates, plus 15%.⁷

The record in this proceeding supports the Coalition's proposals. The comments filed by other parties are remarkably uniform. Every commenter addressing the issue proposes a benchmark at or near the two benchmark proposals made by the Coalition. MCI, for example, proposes that the benchmark should be "set based on the average prison rates of MCI, AT&T and Sprint, plus some margin."⁸ Sprint suggests that the Commission set the rate at "115% of the weighted average charges for 0+ calls of the

⁵ The Coalition is making clear what was implicit in initial comments – that it's proposed benchmark is based on the Big Three's appropriate inmate collect call rate depending on when the call is placed: either day, evening or night/weekend.

⁶ See Comments of the Inmate Calling Services Providers Coalition, CC Docket 96-128, filed July 1, 1996 at 4-13; Reply Comments of the Inmate Calling Services Providers Coalition, CC Docket 96-128, filed July 15, 1996 at 3-6.

⁷ Under either proposal, the rate level would be tied to some index and adjusted upward in \$.05 increments as justified by the index.

⁸ Comments of MCI at 6.

[Big Three].⁹ GTE advocates that the benchmark be set at 120% of the highest of the Big Three's rates.¹⁰

Gateway Technologies, Inc.'s ("Gateway") proposal is perhaps most significant. Gateway, which, has a long history of attacking the Coalition's rate proposals as too high has now proposed a benchmark that would yield rates that, while in some instances are higher than the Coalition's proposed rates, are generally very close to the Coalition's. Under Gateway's proposal, the benchmark would be set at 100% (instead of 115%) of the Big Three's rates, but the base rate would be the Big Three's daytime rates, regardless of when the inmate's call is actually placed. Since the majority of inmate calls are made during off-peak evening and weekend hours when MTS rates are much lower than peak daytime rates, Gateway's proposed rates are close to, or slightly above, the Coalition's. For example (using only AT&T's rates for simplicity's sake), a 10 minute, 50 mile inmate collect call placed during night or weekend hours would cost the called party \$6.35 under Gateway's proposal (\$3.35 MTS daytime rates + \$3.00 inmate surcharge). That same call would cost \$5.56 under the Coalition's proposed benchmark $((\$1.15 \times 1.95) + (1.15 \times \$2.10) + \$0.90)$.¹¹

⁹ Comments of Sprint Corporation at 1. It should be noted that Sprint proposes that in the inmate environment, the benchmark should function as a hard cap, i.e. ICSPs would "be flatly prohibited from charging rates in excess of the benchmark." *Id.* at 11.

¹⁰ Comments of GTE at 5.

¹¹ Similarly, despite Gateway's hysterical and entirely misguided attack in the compensation proceeding on the Coalition's proposal for \$.90 per-call compensation for inmate calls (see Reply Comments of Gateway Technologies, Inc. in CC Docket No. 96-128, filed July 15, 1996), the compensation proposal is a more efficient way of achieving fair compensation (see discussion in text following this note) and does not yield rates substantially different than Gateway's proposed rates.

A. Adopting a \$.90 Inmate System Compensation Charge for All Inmate Calls in Conjunction With a Benchmark Based on the Big Three's Existing Non-Inmate Rates Is the Preferred Option

The Coalition's two benchmark proposals are essentially identical with respect to interstate calls. The Big Three's inmate 0+ collect rates are, in each case, their standard MTS charges for operated assisted calls, plus a \$3.00 surcharge. For all three carriers, the inmate surcharge is roughly \$.90 higher than their regular 0+ collect surcharge, to allow for the recovery of the unique costs associated with the inmate calling environment.¹² Thus, under either proposal, the rate would be 115% of the Big Three's MTS rates plus roughly \$3.30-\$3.45 (either 115% of the \$3.00 inmate surcharge or \$.90 plus 115% of the regular collect surcharge of roughly \$2.10).

The \$.90 per call compensation is the preferable option for two reasons. First, it treats inmate calling services as a separate, distinct service with unique costs, rendered and compensated independently of the rates for the long distance portion of the call. In other words, by providing for the direct recovery of the specialized equipment and services required to provide inmate calling services, the Commission could break the link between compensation for those costs and interstate rates. This would, in turn, allow costs to be properly allocated to cost causers. In addition, by making explicit the specific price for each service, the Commission would promote

¹² See Reply Comments of the Inmate Calling Services Providers Coalition, CC Docket 96-128, filed July 15, 1996 at 6. See also Comments of Gateway Technologies, Inc. at 5 ("All [of the Big Three carriers] have tariffed inmate service rates specifically designed to recover the unique costs associated with servicing this highly specialized market.").

market efficiencies by allowing carriers and ICSPs to better compete on the basis of price.

Second, the \$.90 compensation charge proposal would end the current system of cross-subsidization of intrastate rates by interstate rates. If the Commission does not adopt the Coalition's \$.90 compensation charge for all calls, then only interstate calls would have the \$.90 element (through the \$.90 differential between inmate and non-inmate collect calls built into the Big Three's inmate calling rates). At least some categories of intrastate inmate 0+ collect calling rates are capped at dominant carrier rates in many jurisdictions. In many of those states, the capped rates for at least local calls is set below cost. Thus, while ICSPs would have adequate relief with respect to interstate calls, they would continue to suffer losses on intrastate calls, which they would be forced to subsidize through their interstate rates. This in turn would lead to many ICSPs having to set their interstate rates above the benchmark, and comply with the enforcement mechanisms discussed in Section III. Such compliance would place an onerous burden not only on the ICSPs themselves, but on the Commission as well. The Commission would have to conduct countless rate proceedings to allow the overcharging ICSP to prove that their offending rates were necessitated by the below-cost local calling rate caps. This would defeat one of the chief advantages of the benchmark approach, which is that it is an efficient mechanism for addressing overcharging because it allows the Commission to target the small minority of ICSPs currently charging excessive rates.

In sum, the preferred option is clearly for the Commission to establish a \$.90 compensation charge for all inmate calls independently of this rate proceeding. This will allow the Commission to ensure, as required by Section 276, that ICSPs are fairly compensated for providing the specialized equipment and services necessary in the inmate environment, without having to capture that compensation in the long distance rates.

III. THE COMMISSION HAS NUMEROUS TOOLS AT ITS DISPOSAL TO EFFECTIVELY ENFORCE THE BENCHMARK

As the Coalition demonstrated in its initial comments, the Commission has a number of mechanisms for effectively enforcing a rate benchmark, including (1) heightened scrutiny of rates above the benchmark, including dominant carrier tariff filing procedures and cost-justification; (2) mandatory disclosure of rates above the benchmark; and (3) LEC bill screening of calls above the benchmark. The record in this proceeding supports all of these proposals.

A. Heightened Scrutiny of Rates Above the Benchmark

In its initial comments, the Coalition proposed that the benchmark function as a safe harbor, below which rates would be presumptively reasonable and ICSPs would be subject to only the most minimal tariff filing requirements.¹³ By contrast, the Coalition proposed that any ICSP charging in excess of the benchmark would be subject to dominant carrier tariff filing procedures, including the requirement that it cost-justify its rates.

¹³

Coalition comments at 10.

In order to make the dominant carrier tariff filing requirement an even more effective vehicle for ensuring scrutiny of rates in excess of the benchmark, the Commission should require the filing of a separate tariff for every facility where a given ICSP is over the benchmark. This would allow the Commission and interested parties to scrutinize rates on a facility-by-facility basis to ensure that they are cost-justified. If, however, the Commission requires the filing of individual interstate tariffs for each facility where an ICSP is charging rates in excess of the benchmark, there would have to be an exception for interstate calls originating from facilities in states where intrastate rates are capped below compensatory levels (see discussion in Section II(b) above). Section 276 requires that ICSPs be fairly compensated for all calls. The Commission will not have fulfilled its Section 276 mandate if it imposes extra duties and filing requirements on ICSPs who are attempting only to achieve "fair compensation" by retrieving justifiable compensation in the interstate jurisdiction for calls that are not being adequately compensated in the intrastate jurisdiction.¹⁴ If, by contrast, the Commission adopts the Coalition's \$.90 per call compensation for all inmate calls, then no such exception to the tariff requirement would be required.

B. Mandatory Disclosure of Rates Above the Benchmark

In addition to tariff requirements discussed above, the Commission should also require that any ICSP charging in excess of the benchmark rates must provide real-time full price disclosure on all calls above the benchmark. The Coalition agrees with Gateway that such disclosure would be effective in curbing excessive ICSP rates

¹⁴ See Conway v. Federal Power Commission, 510 F.2d 1264 (D.C. Cir. 1975); aff'd 426 U.S. 217 (1976).

because it will allow the called party to "be able to tailor the length of his/her telephone conversation with an inmate depending the rates and the ability to pay those rates."¹⁵ In addition, called parties could refuse to accept the call outright if the quoted rate was unacceptably high. As Sprint said in its comments, this will "create a powerful inducement [for ICSPs] to moderate the charges in the high-rate tier of the market."¹⁶

In order to provide the called party with meaningful rate information, the disclosure must, as the Commission tentatively concludes in Notice, include the actual price to be charged for the call.¹⁷ This requires that the called party be informed of the charge for the initial period (including surcharges) as well as the subsequent period charges.¹⁸ In addition, the Coalition agrees with Gateway that the price disclosure message should include the identity of the ICSP.¹⁹

A handful of commenters advocate disclosure on all calls.²⁰ The Coalition agrees with Sprint that "[s]uch a requirement would needlessly increase the costs of carriers that charge low rates, would require an increase in rates to cover such costs, and would delay call completion for all calls."²¹ Providers that charge rates below the benchmark should not have to assume the administratively burdensome task of making such rate disclosures. In addition, disclosure on all calls would undermine the

¹⁵ Comments of Gateway Technologies, Inc. at 11.

¹⁶ Comments of Sprint Corporation at 4.

¹⁷ Notice, ¶ 34.

¹⁸ Id.

¹⁹ See Comments of Gateway Technologies, Inc. at 10; Comments of the Public Utilities Commission of Ohio at 5.

²⁰ See, e.g., Comments of the State of California and the Public Utility Commission of the State of California on the Notice of Proposed Rulemaking at 3.

²¹ Comments of Sprint Corporation at 4 n. 3. MCI also notes that disclosure on all calls "would increase dialing delay." Comments of MCI at 4.

effectiveness of price disclosure because called parties would quickly become numb to the disclosure message.

C. LEC Bill Screening of Calls Above the Benchmark

The Coalition also proposed that the Commission require LECs to screen call records sent by ICSPs for billing, and only bill for calls complying with the benchmarks. The comments do not dispute that such bill screening of inmate service calls would add significantly to the effectiveness of benchmarks in preventing unreasonably high charges.

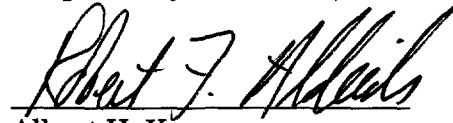
IV. CONCLUSIONS

For the reasons shown above and in the Coalition's initial comments in this proceeding, the Commission should:

1. Establish a rate benchmark for inmate calls at 115% of the Big Three's non-inmate 0+ rates if the Commission prescribes a \$.90 compensation charge for all inmate calls, or, in the alternative, at 115% of the Big Three's inmate 0+ collect call rates if the Commission does not prescribe a \$.90 compensation charge.
2. Enforce the benchmark through (1) heightened scrutiny of over-benchmark rates including the filing of individual tariffs for every facility where the ICSP charges rates over the benchmark;

(2) requiring real-time full price disclosure of all calls over the benchmark; and (3) requiring that LECs not bill for any calls over the benchmark.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert F. Aldrich", written over a horizontal line.

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